

## Officer History

**Officer Name:** SCHACK, DOUGLAS  
**Tax ID:** 931175      **Sex:** M  
**Shield:** 00000      **Race:** Hispanic  
**Rank:** LT      **Command:** 072  
**Birth Year:** 1979      **Appt Date:** 07/01/2002  
**Age:** 43      **Tenure:** 19

CCRB #	CMD	Incident Date	Reported Date	Allegation	Allegation Disposition	Board Discipline Recommendation*	NYPD Allegation Disposition	NYPD MOS Penalty
200405339	09	06/03/2004	06/04/2004	Abuse - Other	Exonerated			
200612653	009	09/23/2006	09/23/2006	Force - Physical force	Unfounded			
				Force - Physical force	Exonerated			
200701300	009	01/12/2007	01/26/2007	Discourtesy - Word	Substantiated (Charges)		Command Discipline - B	Command Discipline - B
				Abuse - Retaliatory arrest	Substantiated (Charges)		No Disciplinary Action-DUP	Command Discipline - B
				Force - Physical force	Unsubstantiated			
200917744	009	11/11/2009	11/17/2009	Discourtesy - Word	Unsubstantiated			
				Force - Physical force	Unsubstantiated			
201806962	161	08/18/2018	08/23/2018	Off. Language - Ethnicity	Substantiated (Command Discipline B)		Command Discipline - B	Command Discipline - B
				Off. Language - Other	Substantiated (Command Discipline B)		Command Discipline - B	Command Discipline - B
201905049	161	05/31/2019	06/11/2019	Abuse - Threat to damage/seize property	Complaint Withdrawn			
202106029	072	10/05/2021	10/06/2021	Abuse - Interference with recording				
				Abuse - Refusal to process civilian complaint				
				Force - Physical force				
				Abuse - Seizure of property				
				Abuse - Search (of person)				

**Total Charges = 16 Total Cases = 7**

\*Board Discipline Recommendations were not issued for complaints closed prior to the CCRB's adoption of the NYPD's Disciplinary Matrix on 03/15/2021. With the adoption of the NYPD Disiciplinary Matrix, CCRB now issues a Board Discipline Recommendation for officers that is seperate and apart from the disposition of the allegations substantiated against the officer.

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gregory Morril	Team: Team # 5	CCRB Case #: 200701300	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Courtesy <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Fri, 01/12/2007 12:15 AM	Location of Incident: in front of 225 East 6th Street		Precinct: 09      S.O.L. Expires: 07/12/2008
Date/Time CV Reported Fri, 01/26/2007 10:04 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 01/26/2007 10:04 PM
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>	
1. [REDACTED] Ke [REDACTED]	Comp/Victim	[REDACTED]	
<b>Witness(es)</b>	<b>Home Address</b>		
1. [REDACTED] Ka [REDACTED]	[REDACTED]		
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>
1. POM Douglas Schack	30837	931175	009 PCT
2. POM William Glynn	30676	932718	009 PCT
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>
1. POM Edward Nusser	28007	928879	009 PCT
<b>Officer(s)</b>	<b>Allegation</b>		<b>Investigator Recommendation</b>
A . POM Douglas Schack	Discourtesy: Police Officer Douglas Schack spoke obscenely and/or rudely to [REDACTED] Ke [REDACTED]		A . Substantiated
B . POM Douglas Schack	Abuse of Authority: Police Officer Douglas Schack arrested [REDACTED] Ke [REDACTED]		B . Substantiated
C . POM Douglas Schack	Force: Police Officer Douglas Schack used physical force against [REDACTED] Ke [REDACTED]		C . Unsubstantiated
D . POM William Glynn	Force: Police Officer William Glynn used physical force against [REDACTED] Ke [REDACTED]		D . Unsubstantiated

### **Synopsis**

On January 12, 2007, [REDACTED] Ke [REDACTED] was hailing a taxi in front of a bar at 225 East Sixth Street in Manhattan. As he was hailing a taxi with his left hand, Mr. Ke [REDACTED] was holding a digital video recorder in his right hand and filming his friend [REDACTED] Ka [REDACTED] who stood on the sidewalk. As Mr. Ke [REDACTED] stood between two parked cars with his hand extended onto the street, an unmarked police van containing plainclothes Police Officers Douglas Schack, William Glynn, and Edward Nusser approached Mr. Ke [REDACTED]. As the van passed Mr. Ke [REDACTED], the driver's side rearview mirror struck Mr. Ke [REDACTED]'s hand. Mr. Ke [REDACTED] yelled out that his hand had been struck as Officer Schack continued driving forward. Officer Schack drove the van in reverse to Mr. Ke [REDACTED] and asked him if he usually liked "to stand in the middle of the street." This verbal interaction was captured on Mr. Ke [REDACTED]'s digital recorder, and Mr. Ke [REDACTED] later provided the CCRB with a copy of the footage. The officers involved in this incident did not dispute the veracity of the footage. Mr. Ke [REDACTED] said to Officer Schack, "You usually like to run into people's hands who are trying to hitch a ride?" Officer Schack responded to Mr. Ke [REDACTED], "You're a fucking idiot, how about that?" (**allegation A**). Mr. Ke [REDACTED] responded, "How about you suck my dick?" Officer Schack immediately exited the van and attempted to place Mr. Ke [REDACTED] under arrest for disorderly conduct (**allegation B**). Up until this point, none of the officers had identified themselves as police officers. Six seconds after Officer Schack exited the van, Officers Schack and Glynn had wrestled Mr. Ke [REDACTED] onto the ground. Mr. Ke [REDACTED]'s face struck the pavement, causing a gash that required ten stitches to heal (**allegations C and D**). Mr. Ke [REDACTED] was charged with two counts of disorderly conduct for obstructing vehicular traffic and using obscene language in a public place.

Based on Mr. Ke [REDACTED]'s testimony, which was corroborated by video and audio evidence, this investigation determined that Officer Schack called Mr. Ke [REDACTED] a "fucking idiot" and had no legitimate purpose for doing so. It is therefore recommended that **allegation A** be closed as **substantiated**. Based on an analysis of the video evidence and witness testimony, this investigation determined that Officer Schack acted to arrest Mr. Ke [REDACTED] only out of personal pique and neither count of the disorderly conduct charge was justified. As this arrest was made without probable cause and was done in bad faith, it is recommended that **allegation B** be closed as **substantiated**. The physical interaction between Mr. Ke [REDACTED] and the officers is not visible in the video footage and neither set of testimony was sufficiently reliable for this investigation to establish whether Mr. Ke [REDACTED] was resisting arrest and if the use of force against him was justified. It is therefore recommended that **allegations C and D** be closed as **unsubstantiated**.

### **Summary of Complaint**

[REDACTED] Ke [REDACTED], a 29-year-old white man [REDACTED], filed a complaint with the CCRB's online Web site on January 26, 2007 (encl. 10) and was interviewed at the CCRB on February 12, 2007 (encl. 13). [REDACTED] Mr. Ke [REDACTED]'s statements were consistent with each other with only inconsistencies noted below.

Mr. Ke [REDACTED] was treated at Bellevue Hospital in Manhattan on January 12, 2007. Mr. Ke [REDACTED] reportedly refused to be medically treated unless he was first seen by a social worker. According to a social worker's report, Mr. Ke [REDACTED] was "highly agitated and uncooperative" at the time of his interview at 1:30 a.m. on January 12, 2007. Mr. Ke [REDACTED] stated that he was "hit in the hand by a police van side-view mirror while trying to hail a taxi." Mr. Ke [REDACTED] stated that he was "physically assaulted by the police." Mr. Ke [REDACTED] reportedly had blood all over his face (concentrated on the left side) at the time of the interview (encl. 12). In Mr. Ke [REDACTED]'s NYPD arrest photograph, Mr. Ke [REDACTED] has a large bandage over his right eye. Extensive scratches and blood are visible throughout Mr. Ke [REDACTED]'s face (encl. 14). Mr. Ke [REDACTED] provided the CCRB with digital photographs taken of his injuries that document scratches to his face and knee and a large bruise to his left arm near the elbow (encl. 15). At his CCRB interview, Mr. Ke [REDACTED] stated that on January 12, 2007, at approximately 12:15 a.m., he was standing outside of a bar called Bounce on East Sixth Street between Second and Third Avenues in Manhattan. Mr. Ke [REDACTED] had been inside of Bounce for approximately an hour and a half and consumed approximately three drinks. Previously, Mr. Ke [REDACTED] had been at another unknown bar (that he identified as the oldest bar in New York) and consumed one pint of beer. Before that bar, Mr. Ke [REDACTED] had been at the Dakota Roadhouse bar and consumed one or two drinks there. Mr. Ke [REDACTED] said that he may have stopped at one other bar before going to Dakota Roadhouse, but he

had not been home since leaving work on this date. Mr. Ke█ could not estimate how many drinks total he had consumed, but he described himself as “intoxicated.”

Mr. Ke█ was with his friend from work, █ Ka█ and Mr. Ka█’s female friend, whose name Mr. Ke█ did not know. This female friend left to go home, while Mr. Ka█ and Mr. Ke█ attempted to hail a taxi in order to meet up with some friends at another bar on the Lower East Side. Mr. Ke█ stood between two parked cars on East Sixth Street to hail a taxi and had his left hand extended out into the street. Mr. Ke█ denied that he was standing in the “middle” of the street, as the officers later alleged. Mr. Ke█ said that he was mostly positioned between the two parked cars and may have been slightly in the roadway. While hailing the taxi, Mr. Ke█ was holding a small digital video recorder in his right hand to film Mr. Ka█. Mr. Ka█ had just obtained the phone number of the bartender inside of Bounce, and Mr. Ke█ was recording him, because he was being amusing about his accomplishment. Mr. Ke█ carries the digital video recorder everywhere that he goes, because “it’s the digital age.” About one minute after Mr. Ke█ had started to hail a taxi, a dark unmarked van passed by and the driver’s side rearview mirror of the van struck Mr. Ke█’s hand, causing the mirror to bend on its hinge towards the window of the vehicle. The van was traveling eastbound on East Sixth Street, while Mr. Ke█ was standing on the north side of the street and facing westbound. Mr. Ke█ saw the van coming towards him before it hit him, but he did not pay any particular attention to it. At the moment that the van struck his hand, Mr. Ke█ said that he may have looked away but still had his hand extended. Mr. Ke█ believes that the van was either extremely negligent or otherwise intentionally struck his hand. Mr. Ke█ did not believe that the van was travelling much above the speed limit.

Mr. Ke█ yelled out, “Hey, that was my hand!” Mr. Ke█ was not yelling out in a threatening manner and believed that it was almost “funny” that his hand had been struck. The van drove in reverse down the street and the driver of the van—who was identified by this investigation as Police Officer Douglas Schack—said to Mr. Ke█, “Do you always stand in the middle of the street?” Mr. Ke█ said that if he had been sober, he would have probably “shit [his] pants” when the van started to back up. Instead in his intoxicated state, Mr. Ke█ said to Officer Schack, “Do you always hit people who are trying to hitch a ride?” Officer Schack said, “Hitch a ride? I think you’re a fucking idiot, how about that?” Mr. Ke█ that he was stunned by Officer Schack’s response and after processing the remark, he responded, “How about you suck my dick?” Mr. Ke█ said that after Officer Schack’s comment, he had “nothing better to say” but did not want to get into a fight with Officer Schack. Officer Schack got out of the van and grabbed onto Mr. Ke█’s arm. At this point, Officer Schack had never identified himself or displayed a shield. Mr. Ke█ said that he was not certain but guesses that he moved his hand away, because “some guy just got out of a van and is grabbing me.” Mr. Ke█ denied that he was ever violent with the officers. Mr. Ke█ is not certain if he ever heard the officers identify themselves as police officers at the time of this incident, but upon viewing the video recording of the incident later, Mr. Ke█ heard that one of the officers identified himself as a police officer. In his intake statement to the CCRB, Mr. Ke█ stated that Officer Schack told Mr. Ke█ to “turn around” after grabbing onto his arm but did not identify himself as a police officer.

A fraction of a second later, Officer Schack “threw” Mr. Ke█ onto the ground face first, causing a gash over his right eye and injuries to his knee and elbow. Two additional officers—identified as Police Officers Edward Nusser and William Glynn—who were seated in the front passenger seat and one of the rear seats of the van exited as well. Mr. Ke█ could only describe both of these officers as white men, but Mr. Ke█ did not know their involvement in his arrest. Mr. Ke█ described Officer Shack as a 30-year-old white man, who is 6’0” with a stocky build. Mr. Ke█ believed that Officer Schack’s name was “Shack” or “Scheck” and his shield number was 30837. Mr. Ke█ obtained Officer Schack’s name and shield number from a form that he was given to claim his property. Mr. Ke█ said that he does not know for certain that Officer Schack is the same officer whose information appeared on this form, but he believed that Officer Schack was the arresting officer, because he accompanied Mr. Ke█ to the hospital.

Mr. Ke█ believed that one other unknown officer assisted Officer Schack in physically bringing Mr. Ke█ onto the ground. Because he was taken onto the ground so quickly, Mr. Ke█ could not describe exactly how he was thrown to the ground. On the ground, there was no struggle and Mr. Ke█ did not fight with the officers or resist. Mr. Ke█ said that the rest of the incident was blurry to him. The officers

took Mr. Ke█ to the Ninth Precinct stationhouse, but the desk officer told the officers that Mr. Ke█ was bleeding too much and needed to be brought to the hospital. Outside of the stationhouse, Mr. Ke█ was placed into an ambulance and handcuffed to a stretcher and transported to Bellevue Hospital. Mr. Ke█ received ten stitches above his right eye, which was caused by him falling onto the ground face first. Mr. Ke█ also received cuts and bruises to his elbow and knee from hitting the pavement. Mr. Ke█'s camera was not seriously damaged aside from a few scratches, and Mr. Ke█ believes that it landed on top of his hand and did not hit the pavement.

As Mr. Ke█'s digital video recorder was turned on before the van struck him, Mr. Ke█ captured audio and video footage of the incident. The video portion is difficult to decipher, but the audio portion can be heard clearly. Mr. Ke█ reviewed the video footage of this incident multiple times before testifying at the CCRB but attempted to testify based on his memory and not the footage as best as he could. Mr. Ke█ later learned from Mr. Ka█ that one of the officers attempted to erase the footage but could not figure out how to do so. Mr. Ke█ asked if he could hand his camera to Mr. Ka█, and one of the officers gave his camera to Mr. Ka█ for him. Mr. Ke█ did not believe that the officers realized that he was holding a camera during this incident. Mr. Ke█ also believed that the officers attempted to tamper with the camera, because it was set to settings and modes that he does not normally use. At the conclusion of his CCRB interview, Mr. Ke█ showed the CCRB the video footage of the incident that he had recorded. Mr. Ke█ later furnished the CCRB with a digital copy of the footage.

In his intake statement to the CCRB, Mr. Ke█ reported that once he was released from Bellevue Hospital, Officer Schack and two unidentified officers transported Mr. Ke█ back to the Ninth Precinct stationhouse. En route to the stationhouse, Mr. Ke█ alleged that one of the officers asked him if he worked with a lot of "nice asses" at █ and later told him to "get the fuck out" of the van. Mr. Ke█ did not repeat these allegations in his sworn statement to the CCRB.

On March 19, 2007, Mr. Ke█ filed a notice of claim against the City of New York (encl. 16). Mr. Ke█ reported that he was "assaulted and injured" by officers and "falsely arrested." Mr. Ke█ claimed damages in excess of \$100,000 for each of the following categories: false arrest, illegal imprisonment, emotional distress, cost of defending case, loss of wages, and loss of time from work.

#### Results of Investigation

##### **Video Footage of Incident**

The following is a transcript of video footage of this incident that Mr. Ke█ recorded on a personal digital video recorder and provided to the CCRB (encl. 17). There is little to no visibility throughout the footage but the audio portion is clear.

[Male voice, presumably █ Ka█]: ...Let me see if there is there is any changes of me getting anything...

**Mr. Ke█:** Come on!  
(Sound of van hitting hand)

**Mr. Ke█:** Hey that was my hand!  
(Sound of van driving. For approximately one second the driver's side taillight of the van is visible. In this frame, a white light in the taillight is illuminated, indicating that the van is set to drive in reverse. There are no emergency or police lights visible in this frame.)

(Approximately ten seconds later, a man—identified as **Officer Schack**—says): You usually like to stand out in the middle of the street?

**Mr. Ke█** (*with apparently slurred speech*): You usually like to run into people's hands who are trying to hitch a ride?

**Officer Schack:** Why you going to hitch a ride? You're a fucking idiot, how about that?

**Mr. Ke** How about that?—

**Officer Schack:** Why you standing the middle of the street?—

**Mr. Ke** How about you suck my dick?

(Officer Schack says something indecipherable to Mr. Ke, as Mr. Ke says, "Suck my dick." It is possible that Officer Schack says, "I want to talk to you.)

(Without pause, the sound of a van door opening is audible) **Officer Schack:** How about you turn around?

**Unknown voices:** Police! Police!

**Mr. Ke**: Let's go! Let's go motherfucker! Let's go!

**Unknown voice:** Police! Put your hands-

**Mr. Ke**: Yeah right!

(Sounds of camera falling and presumably hitting ground. This occurs six seconds after Mr. Ke said, "Suck my dick.")

**Mr. Ke**: What the fuck?

**Unknown voices:** Police. You're under arrest.

**Mr. Ke**: Bullshit! Under arrest for what? Are you fucking kidding me?

**Unknown voices:** Watch your head. Watch your head.

**Mr. Ke**: Dude, I was trying to—

**Officer Schack:** You don't tell a cop to suck—

**Mr. Ke**: You hit my fucking...you hit my hand. You're fucking kidding me.

**Mr. Ka** (in the background): He was just wasted, man. He was an idiot. We were out celebrating...

**Mr. Ke**: Dude, you can arrest me.

**Unknown voice (yells):** Give me your fucking hand!

**Mr. Ke**: It's right here.

**Unknown voice:** There you go.

**Mr. Ke**: Dude, you're fucking kidding me (*laughs*). Dude... Take my camera! Take my camera.

**Mr. Ka**: Shut up!

**Unknown officer:** Let go of your camera. I'm going to give it to your friend.

**Mr. Ke**: Let my friend take it.

**Unknown officer:** No. He's not allowed to come over here.

END

#### CIVILIAN WITNESS STATEMENT

**Ka**

On February 13, 2007, the CCRB obtained a telephone statement from **Ka**, a 27-year-old Indian man (encl. 18). Mr. **Ka** has known Mr. **Ke** for approximately one year and said that they are friends, who met at work and through mutual acquaintances.

Mr. **Ka** said that he had gone out after work on January 11, 2007 with friends from work to celebrate two coworkers who were resigning. Mr. **Ka** and Mr. **Ke** had gone to a bar named Pound and Pence near their office with some friends after work and then walked to another bar called Bounce on East Sixth Street near Second Avenue. Mr. **Ka** initially stated that he was "drunk-a little bit" during this incident but later described himself as "slightly tipsy" or "buzzed" but not drunk. Mr. **Ka** consumed five to six alcoholic beverages during the night. On January 12, 2007, at approximately 12:15 a.m., Mr. **Ke** was standing outside of Bounce attempting to hail a taxi, so that he and Mr. **Ka** could go home. Their other friends had

already departed. Mr. Ke█ was standing on the sidewalk—not the street—and a van drove by. Mr. Ka█ initially stated that Mr. Ke█'s hand "lightly hit" the front of the van but later stated that he was not certain if Mr. Ke█'s hand had in fact made contact with the van or if it had just nearly hit it. Mr. Ke█ was not certain if there were cars parked on the street but said that the van drove directly next to Mr. Ke█, when they nearly had contact. Mr. Ke█ said something along the lines of "watch where you're going." The van stopped and backed up to Mr. Ke█. The officer seated in the driver's seat of the van—identified as Officer Schack—asked Mr. Ke█ what he had said. Mr. Ke█ responded in a "rude" fashion, although Mr. Ka█ could not remember his exact words. Officer Schack responded by using obscenities, which Mr. Ka█ could not exactly remember, but he may have called Mr. Ke█ an "asshole." Mr. Ke█ responded with an obscene word that Mr. Ka█ could not recall. Officer Schack and the front passenger of the van — identified as Officer Nusser—exited and displayed their shields and told Mr. Ke█ that he was under arrest. Previously the officers had not displayed their shields, and Mr. Ka█ and Mr. Ke█ did not know that they were speaking with police officers. The officers then quickly "took" Mr. Ke█ onto the ground, but Mr. Ka█ did not believe that Mr. Ke█ fought with the officers or moved his arm away from them.

Mr. Ka█ said that he believed that at least parts of this incident was captured on videotape, but he had not seen any footage. Mr. Ka█ did not know when Mr. Ke█ first turned the camera on. One of the officers handed Mr. Ka█ the camera once Mr. Ke█ was handcuffed. Mr. Ka█ did not recall which of the officers did so, but Mr. Ka█ did not see any of the officers examine or interfere with the footage before handing it to him. Mr. Ka█ told the officers that Mr. Ke█ needed to work the next day. Mr. Ke█ had hit his face on the ground, when the officers brought him down. The officers told Mr. Ka█ that as Mr. Ke█ was injured, they had to get him examined first. Mr. Ka█ could only describe the front driver and passenger of the van (Officers Schack and Nusser) as white men. The third officer in the van (Officer Glynn) was an Asian man and was telling Mr. Ka█ to stand back and not get involved in the incident. Once Mr. Ke█ was in handcuffs two marked patrol cars passed by and stopped to see what was happening. The bouncer of Bounce bar also came outside to see what was happening, but Mr. Ka█ did not believe that anyone was outside when Mr. Ke█ was arrested.

Mr. Ka█ went home after Mr. Ke█ was arrested. The next day, Mr. Ka█ attempted to visit Mr. Ke█ at the Ninth Precinct stationhouse and called him on his cell phone, but Mr. Ka█ was not able to get into contact with Mr. Ke█.

#### **POLICE OFFICER TESTIMONY**

*Police Officer Douglas Schack (Ninth Precinct) Subject Officer*

#### *Arrest and Complaint Reports*

In a criminal court complaint and an arrest report for this incident, Officer Schack wrote that Mr. Ke█ was standing in the "middle" of the street and "impeding traffic" (encl. 20). When Officer Schack drove past Mr. Ke█, Mr. Ke█ "did reach out and hit driver side mirror, thus closing it." When Mr. Ke█ was asked why he struck the van, Mr. Ke█ stated, "Suck my dick!" Mr. Ke█ then reportedly refused to place his hands behind his back and "did flail his arms" at Officer Schack, while Officer Schack attempted to handcuff him. Mr. Ke█ was charged with resisting arrest and two counts of disorderly conduct (subsection three of the statute for using obscene language and section five for obstructing traffic).

#### **CCRB Statement**

Police Officer Douglas Schack was interviewed at the CCRB on April 11, 2007 (encl. 21). Officer Schack, a 28-year-old Hispanic man, is 5'10" and 197 pounds. Officer Schack has been assigned to the grand larceny unit of the Ninth Precinct for approximately three years. Officer Schack worked from 5:00 p.m. on January 11, 2007 until 6:59 a.m. on January 12, 2007 with Officers William Glynn and Edward Nusser and was assigned to the grand larceny team. The grand larceny team is responsible for investigating grand larcenies and conducting operations such as "bag drops," where a bag is left unattended at a public place and officers arrest anyone who attempts to steal it. Earlier in the date, Officer Schack was working with Officer James Mahoney, but at the time of the incident, Officer Schack believed that Officer Mahoney was not present for an unknown reason. Officer Schack was dressed in plainclothes and assigned to an unmarked van. In his memo book, Officer Schack noted that he made one arrest at 12:15 a.m. on January 12, 2007 in front of 225 East Sixth Street. Mr. Ke█ reportedly struck the police van and then told the officers to "suck his dick." Mr. Ke█ reportedly began to "swing arms and hit P.O." Witness █ Ka█

reportedly stated, "My friend is drunk and was out of line. He usually doesn't act like this." At 12:35 p.m., Officer Schack transported Mr. Ke█ to Bellevue Hospital from the Ninth Precinct. From 12:40 a.m. until 4:35 a.m., Officer Schack was present at Bellevue Hospital with Mr. Ke█. At 4:45 a.m., Officer Schack conducted arrest processing at the stationhouse. At 6:08 a.m., Officer Schack transported two prisoners to Central Booking, but was told that the unit was closed. At 6:52 a.m., Officer Schack returned to the station. At 12:40 p.m., Officer Schack transported Mr. Ke█ to Central Booking (encl. 19).

Until the end of the interview, Officer Schack was given no indication that the CCRB had video footage of this incident. Officer Schack testified that on January 12, 2007, at approximately 12:15 a.m., he was driving eastbound on East Sixth Street towards a bar called Lit on Second Avenue between Fifth and Sixth Streets in order to conduct a bag drop operation. Officer Schack did not remember which officer was sitting in the front passenger seat. As Officer Schack was driving the unmarked police van, he observed Mr. Ke█ standing in the street fifty to sixty feet away from the police van. Mr. Ke█ was standing about four to five feet away from a car parked at the curb with his hand extended as if he was trying to hail a taxi. The distance between this parked car and a car parked directly across from it on the other side of the street was approximately fifteen feet. Mr. Ke█ was standing in the same position with his hand extended and possibly moving around throughout the time that Officer Schack observed him. As Officer Schack drove past him, Mr. Ke█ took one step towards the van and reached out and slapped the driver's side rearview mirror with his left hand, causing the mirror to close on its hinges. Officer Schack believed that Mr. Ke█ intentionally struck the van with his hand. Before his hand hit the van, Officer Schack saw that Mr. Ke█'s hand was extended and it appeared that he was trying to stop a taxi behind the police van, but Officer Schack saw no indication that Mr. Ke█ was going to reach out and hit the van. Mr. Ke█ did not damage the van. Officer Schack did not know how fast he was driving when Mr. Ke█ hit the van, but he said that he was not speeding because he observed Mr. Ke█ standing in the street. At the time of contact, Officer Schack did not have his shield displayed and the emergency lights of the van were not illuminated. The windows in the police van were closed and Officer Schack did not hear if Mr. Ke█ said anything.

Officer Schack drove approximately fifteen feet past Mr. Ke█ and then illuminated the van's police lights located on the rear and front of the vehicle and drove in reverse to Mr. Ke█. Officer Schack told Mr. Ke█, "It's not too smart to hit a vehicle, especially this one, because it's a police vehicle." Officer Schack did not recall if he had his shield displayed at this point. Mr. Ke█ told Officer Schack to "suck his dick." Officer Schack did not recall what else Mr. Ke█ said to him. Officer Schack said that he did not remember ever cursing at Mr. Ke█. Mr. Ke█'s speech was slightly slurred and it appeared that Mr. Ke█ had been drinking. There were at least two civilians standing in the street watching this incident and a number of other people walking down the block as well as Mr. Ke█'s friend, █ Ka█. Officer Schack then exited the van in order to place Mr. Ke█ under arrest and told him to place his arms behind his back. Officer Schack said that once Mr. Ke█ told him to "suck his dick," he intended to place him under arrest for disorderly conduct. Officer Schack charged Mr. Ke█ with two counts of disorderly conduct (for obstructing traffic and for "offensive language") and resisting arrest. Officer Schack said that Mr. Ke█ was charged with obstructing traffic for striking the police van, but Officer Schack did not see Mr. Ke█ obstruct the movement of any other vehicles.

Mr. Ke█ initially went to place his arms behind his back, but then started "flailing" or swinging his arms towards Officer Schack and made an aggressive gesture. Officer Schack took a step back in order to give himself space and did not know what Mr. Ke█ intended to do to him. Officer Glynn then exited the van and "pushed" Mr. Ke█ onto the ground. Mr. Ke█ had a camera in his hand and was expressing concern about it, but Officer Schack said that he did not know if the camera was turned on. Officers Glynn, Nusser, and Schack placed Mr. Ke█ into handcuffs on the ground. On the ground, Mr. Ke█ was resisting arrest by trying to keep his hands away from the officers. Officer Schack did not recall if any of the officers said to Mr. Ke█, "Give me your fucking hands." Officer Schack observed that Mr. Ke█ had sustained a laceration to his eye from falling onto the ground and called for a supervisor to respond to the scene due to the arrest. Officer Schack was not aware of this injury until after Mr. Ke█ was handcuffed. Lt. Robert Corcoran responded to the scene and called for an ambulance to respond to the stationhouse. Officer Schack accompanied Mr. Ke█ to Bellevue Hospital, where Mr. Ke█ was rude,

loud, and disrespectful. Mr. Ke█████ was cursing at the hospital personnel and saying that the whole incident was “bullshit.”

This interview was paused for three minutes in order to bring a laptop computer into the interview room, so that Officer Schack could view the video coverage of this incident supplied by Mr. Ke█████ to the CCRB. After watching the video coverage, Officer Schack said, “I don’t recall if that was me or not. I can’t tell if that’s my voice or not. I’ve never listened to myself on a recording.” Officer Schack said that he did not recall anything about his interaction except for Mr. Ke█████ saying, “Suck my dick.” Officer Schack affirmed that he heard someone in the recording say “suck my dick” and the recording sounded as though it was of the incident which resulted in Mr. Ke█████’s arrest. During the incident, Officer Schack did not recall calling Mr. Ke█████ a “fucking idiot.” Officer Schack did not know who told Mr. Ke█████, “Give me your fucking hands.”

***Police Officer William Glynn (Ninth Precinct) Subject Officer***

Police Officer William Glynn was interviewed at the CCRB on May 23, 2007 (encl. 23). Officer Glynn, a 26-year-old white man, is 6’1” and 220 pounds. Officer Glynn has been assigned to the grand larceny unit of the Ninth Precinct since January 2007. Officer Glynn was assigned to patrol at the Ninth Precinct from July 2004 until January 2007. Officer Glynn’s memo book notes that Officer Scheck made an arrest at 12:15 a.m. on January 12, 2007 (encl. 22).

Officer Glynn testified that on January 12, 2007, at approximately 12:15 a.m., he was seated in the rear passenger seat of an unmarked van in the center of the bench. Officer Schack was driving relatively slowly eastbound on East Sixth Street at approximately fifteen miles per hour, when a man (Mr. Ke█████) reached out into the street and slapped the mirror of the van closed and yelled out something indecipherable. Before Mr. Ke█████ struck the van, Officer Glynn saw someone standing the street but he was not paying particular attention to this person. Mr. Ke█████ was standing approximately one to two feet into the street away from a parked car. Officer Glynn did not know the width of the street but said that there was ample room for the van to drive past Mr. Ke█████. Mr. Ke█████ appeared to be with one other person (█████ Ka█████), who was standing on the sidewalk. Officer Glynn did not remember seeing any other civilians in the street. Officer Glynn did not observe Mr. Ke█████ while the officers were driving down the block past him, but just as the officers were passing by, Officer Glynn saw Mr. Ke█████ smack the mirror. Officer Glynn did not remember seeing Mr. Ke█████’s hand extended before he struck the van.

Officer Schack drove the van in reverse, engaged the emergency lights on the van, while all of the officers removed and displayed their police shields. Officer Schack verbally identified himself as a police officer and said something to the effect that it wasn’t a good idea to hit a moving vehicle while it was driving by, especially because the vehicle was a police van. Mr. Ke█████ responded, “Oh you’re cops. Suck my dick.” Officer Glynn denied that Officer Schack called Mr. Ke█████ a “fucking idiot.” As Officer Schack exited the van, he asked Mr. Ke█████ to provide his identification. Officer Glynn did not specifically remember how Mr. Ke█████ responded, but he was belligerent and refused to provide his ID. Officer Schack then told Mr. Ke█████ to turn around, but Mr. Ke█████ then started to flail his arms in Officer Schack’s direction. Officer Glynn heard Mr. Ke█████ and Officer Schack struggling on the driver’s side of the van, so he then exited the van from the passenger side and walked around to the driver’s side, where Officers Schack and Glynn pulled Mr. Ke█████ onto the ground. On the ground, Mr. Ke█████ continued to resist by pulling his hands away from the officers. Officers Schack, Glynn, and Nusser were able to handcuff Mr. Ke█████ by pulling on his arms. Officer Glynn did not believe that he used his own handcuffs to restrain Mr. Ke█████ and said that all three officers were involved in the effort. Officer Glynn denied that he or the other officers said to Mr. Ke█████ “Give me your fucking hands.” Officer Glynn did not know at what point Officer Nusser exited the van or if it occurred before or after Officer Glynn exited. Once Mr. Ke█████ was handcuffed, Officer Glynn observed that Mr. Ke█████ was bleeding from an unknown location on his head. Officer Glynn had not seen Mr. Ke█████’s head as he fell onto the ground and did not know how the injury was sustained. Officer Glynn believed that Mr. Ke█████ was under the influence of either drugs or alcohol due to his “irrational and belligerent behavior.” Mr. Ka█████ was standing on the sidewalk with a video camera, but Officer Glynn did not know if Mr. Ka█████ was filming the arrest. Mr. Ke█████ was transported to a hospital, but Officer Glynn did not accompany him.

Without pausing this interview, Officer Glynn was shown video footage of the incident on a laptop computer. After viewing the footage, Officer Glynn stated that the footage "appears to" depict the incident under investigation. Officer Glynn said that it appeared to be Mr. Ke█ who said, "Suck my dick." Officer Glynn did not know who said to Mr. Ke█, "You're a fucking idiot." While inside the van, Officer Glynn believed that only Officer Schack spoke with Mr. Ke█. Officer Glynn did not know who told Mr. Ke█, "Give me your fucking hands."

***Police Officer Edward Nusser (Ninth Precinct) Witness Officer***

Police Officer Edward Nusser was interviewed at the CCRB on May 24, 2007 (encl. 25). Officer Nusser, a 29-year-old white man, is 5'10" and 215 pounds. Officer Nusser is currently assigned to the Forensic Investigations Division. On January 12, 2007, Officer Nusser was assigned to the Ninth Precinct, where he had been assigned to the conditions and grand larceny team since February 2006. Officer Nusser said that around the time of the incident, he had misplaced his memo book and therefore did not have any memo book entries for the date of this incident (encl. 24).

Officer Nusser testified that as the officers passed an individual (Mr. Ke█), he "staggered" onto the street and slapped the mirror of the van with his left hand. Officer Nusser could not approximate how far into the street Mr. Ke█ walked but said that he was not standing in the "middle of the street" and there was "probably not" enough room for the van to pass by Mr. Ke█. Officer Nusser believed that Mr. Ke█ intentionally struck the van, because he had no other reason to step into the street. Mr. Ke█ appeared to be intoxicated due to the fact that he was "swaying" and "staggering" in the street. Officer Nusser observed Mr. Ke█ for approximately one second before he struck the van and never saw his hand extended before he struck the mirror. One friend (Mr. Ka█) accompanied Mr. Ke█ and there were numerous civilians in the area. Officer Nusser did not know how many civilians were in the vicinity of this incident but said that the area is a busy residential area with many bars nearby. Officer Schack engaged the van's lights and the officers all removed their shields and identified themselves as police officers. Officer Schack put the van into reverse and approached Mr. Ke█. Officer Schack verbally identified himself as a police officer and spoke with Mr. Ke█. Officer Nusser could not recall exactly what Officer Schack and Mr. Ke█ said to each other but remembered Mr. Ke█ saying, "Suck my dick." When Officer Nusser was asked if Officer Schack ever called Mr. Ke█ a "fucking idiot," he responded, "It's possible." Upon further questioning, Officer Nusser stated that "anything's possible" and that he didn't specifically remember whether or not Officer Schack had made such a comment. Officer Nusser believed that Officer Schack requested Mr. Ke█'s identification while Officer Schack was still in the van. Officer Nusser believed that Mr. Ke█ refused to provide his ID and started cursing at the officers. All of the officers exited the van at approximately the same time and attempted to place Mr. Ke█ under arrest. Once Officer Nusser exited the van and walked around to the driver's side, Mr. Ke█ was already on the ground and Officer Nusser did not see how he had fallen onto the ground. Mr. Ke█ was swinging his arms at the officers and trying to keep them away from the officers. Officer Nusser believed that he attempted to handcuff Mr. Ke█ by grabbing onto his arms. Officer Nusser did not remember if he or any of the officers said to Mr. Ke█, "Give me your fucking hands," but Officer Nusser said that it was "possible" that one of the officers made such a comment. Once Mr. Ke█ was handcuffed, Officer Nusser observed a laceration to Mr. Ke█'s face, but Officer Nusser did not know how Mr. Ke█ sustained this injury.

Without pausing the interview, Officer Nusser was shown video footage of this incident. After watching the video footage, Officer Nusser said that the video he was shown was "probably" from the incident under investigation. Officer Nusser could not identify who called Mr. Ke█ a "fucking idiot" or who said to him, "Give me your fucking hands."

**MEDICAL RECORDS**

According to an FDNY ambulance call report, an ambulance responded to the Ninth Precinct Stationhouse in Manhattan to treat Mr. Ke█. Mr. Ke█ had a laceration to the right side of his head. Mr. Ke█ reportedly wrestled with police officers and hit his head on the ground (the emergency medical technician completing this report did not indicate what information this statement was based on). Mr. Ke█ was reportedly "combative and belligerent" and refused all medical treatment (encl. 27a-b). At Bellevue Hospital, Mr. Ke█ received Motrin for pain. Mr. Ke█ received ten stitches to repair the laceration above his right eyebrow (encl. 27c-1).

## **POLICE DEPARTMENT DOCUMENTS**

The Ninth Precinct roll call lists Officers Schack, Glynn, and Nusser as well as Officer James Mahoney as being assigned to the grand larceny team (encl. 28). The CCRB obtained Officer Mahoney's memo book for the date of this incident. Officer Mahoney listed his assignment as the grand larceny team and did not have any entries for the tour (encl. 26b). As Officers Schack, Glynn, and Nusser and Mr. Ke█ and Mr. Ka█ consistently stated that only three officers were involved in this incident, it was not necessary to interview Officer Mahoney regarding this incident. The command log for the Ninth Precinct notes Mr. Ke█'s arrival at the stationhouse at 4:40 a.m. In a line in the command log describing Mr. Ke█'s physical/mental condition, Mr. Ke█'s was described as intoxicated and the presence of a laceration to an unspecified part of Mr. Ke█'s body is noted (encl. 30).

## **DISPOSITION OF CRIMINAL CHARGES**

On January 12, 2007, Mr. Ke█ was granted a six-month conditional discharge in exchange for completing two days of community service. Mr. Ke█ completed his community service before a March 20, 2007 court appearance (encl. 31c).

## **NOTICE OF CLAIM**

As discussed in the section of this report summarizing Mr. Ke█ statements made in connection with this investigation, on March 19, 2007, Mr. Ke█ filed a notice of claim against the City of New York claiming damages that arose from his arrest (encl. 16).

## **CRIMINAL CONVICTION AND CCRB HISTORY**

A search of the OCA database for Mr. Ke█ revealed no known criminal convictions in New York State (encl. 31b). This complaint represents the first that Mr. Ke█ has filed with the CCRB (encl. 9).

Officer Schack, a member of the service for four years, has no previously substantiated CCRB complaints (encl. 7). Officer Glynn has one previously substantiated CCRB complaint in his three years with the CCRB. In case 200605789, the board substantiated an allegation that Officer Glynn conducted an improper strip search and recommended charges. The NYPD's disposition of that case is not yet available (encl. 8).

### **Conclusions and Recommendations**

#### **Police Officer Identification**

Mr. Ke█'s description of Officer Schack (30-year-old white male, 6'0" tall with a stocky build) is generally consistent with Officer Schack (28-year-old Hispanic male, 5'10" tall and 197 pounds). Additionally, Mr. Ke█ and Mr. Ka█ both alleged that the officer seated in the front driver's seat of the unmarked van called Mr. Ke█ a "fucking idiot" and then used force against Mr. Ke█ to arrest him. While Officer Schack did not acknowledge cursing at Mr. Ke█, Officer Schack acknowledged that he was seated in the driver's seat of the van and was the only officer to question Mr. Ke█ from within the van. In the video footage of this incident, Officer Schack's face is not visible when Officer Schack called Mr. Ke█ a "fucking idiot." Officer Schack can nonetheless be identified as the subject of this allegation based on his undisputed position as the driver of the van and because Officer Schack acknowledged that only he was verbally interacting with Mr. Ke█ from within the van. Officer Schack acknowledged that he made the decision to arrest Mr. Ke█. Officer Schack did not acknowledge using physical force against Mr. Ke█ to bring him onto the ground, but both Mr. Ke█ and Officer Glynn stated that Officer Schack was involved in pulling Mr. Ke█ onto the ground. Officer Glynn acknowledged assisting Officer Schack in bringing Mr. Ke█ onto the ground. The officer who can be heard in the video footage of this incident saying to Mr. Ke█, "Give me your fucking hands" while Mr. Ke█ was on the ground and allegedly resisting arrest could not be identified by this investigation. Neither Mr. Ke█ nor Mr. Ka█ noted this allegation in their statements to the CCRB. Officers Schack, Glynn, and Nusser could not identify who made this comment and the person making the comment is not visible in the video footage of this incident. Based on the omission of this allegation from Mr. Ke█'s sworn statement, it was not pleaded in this report. Officer Schack was not charged with a force allegation for striking Mr. Ke█'s hand with the van, because Mr. Ke█ did not definitely allege that Officer Schack intentionally struck him with the van. There is no indication that this collision represented a conscious use of force by Officer Schack as opposed to being the result of a driving error.

### **Disputed and Undisputed Facts**

The initial circumstances surrounding the collision between Mr. Ke█'s hand and the unmarked police van is in dispute in this case. Mr. Ke█ who was admittedly intoxicated, alleged that he was standing between two parked cars while attempting to hail a taxi at the moment of impact. Mr. Ke█ stated that at most his body was only slightly farther into the street beyond the area between the bumpers of the two parked cars. Mr. Ke█ saw the unmarked van approaching him while he was hailing the taxi but said that he looked away before the van passed him. Mr. Ke█ believed that he was not looking at the van when it struck him, but Mr. Ke█ still had his hand extended into the street to hail a taxi. In the arrest report for Mr. Ke█, Officer Schack alleged that Mr. Ke█ was standing in the "middle" of the street and "impeding traffic." In his statement to the CCRB, Officer Schack's statement indicates that Mr. Ke█ was not actually in the "middle" of the street or "impeding traffic." Officer Schack said that Mr. Ke█ was standing approximately four to five feet into the street as measured from the distance between Mr. Ke█ and a car parked on the street. Officer Schack estimated that the width of the entire passable area of the street (the distance between the cars parked on the north and south sides of East Sixth Street) was fifteen feet. Thus, by Officer Schack's own testimony, Mr. Ke█ was at most a third of the way into the street, and not standing in the "middle." Officer Glynn said that Mr. Ke█ was standing only one to two feet into the street and left ample room for the van to pass him. Officer Nusser could not estimate the distance but denied that Mr. Ke█ was standing in the "middle" of the street. Officer Nusser, however, claimed that there was probably not sufficient space for the police van to be able to pass by with Mr. Ke█ standing in the street. Mr. Ka█ claimed that Mr. Ke█ was standing on the sidewalk and not the street and was uncertain if Mr. Ke█'s hand and the van collided.

Officer Schack acknowledged that he first observed Mr. Ke█ when he was standing approximately fifty to sixty feet away from the approaching police van. Officer Schack acknowledged that Mr. Ke█ had his hand extended and appeared to be hailing a taxi, when Officer Schack observed Mr. Ke█ from this distance. According to Officer Schack, as the unmarked van passed by Mr. Ke█, Mr. Ke█ took one step towards the van and reached out to intentionally slap the mirror of the van closed on its hinge. Officer Nusser, who was seated in the front passenger seat of the van, claimed that he only saw Mr. Ke█ for one second before the van passed him. According to Officer Nusser, Mr. Ke█ "staggered" onto the street and slapped the rear-view mirror of the passing van. Officer Nusser claimed that Mr. Ke█ did not have his hand extended until the van passed by. Officer Glynn, who was seated in the center of the rear bench of the van, claimed that he did not observe Mr. Ke█ until an instant before the officers passed him. Officer Glynn also claimed that he saw Mr. Ke█ smack the van's rear-view mirror.

Due to a lack of clear visibility, the digital video recording that Mr. Ke█ provided to the CCRB is generally inconclusive regarding Mr. Ke█'s positioning. Officer Schack would not confirm that the video coverage depicted the incident under investigation, but he did not claim that the video was inaccurate or a fabrication either. Officer Schack further acknowledged that Mr. Ke█ was holding the digital video recorder at the time of his arrest. Officers Glynn and Nusser both acknowledged that the video likely depicted the incident under investigation. Mr. Ke█'s testimony regarding his verbal exchange with Officer Schack is generally consistent with the video footage, as Mr. Ke█ by his own admission reviewed the footage multiple times before testifying. There are significant discrepancies between the testimony of the officers regarding this exchange and the actual exchange, as documented in the video footage. Officers Schack, Glynn, and Nusser all claimed that Officer Schack verbally identified himself as a police officer and illuminated the emergency lights of the van when he approached Mr. Ke█. Officer Schack did not recall if he displayed his police shield, but Officers Glynn and Nusser claimed that all of the officers removed their shields after Mr. Ke█ struck the van. Mr. Ke█ and Mr. Ka█ testified that none of the officers had identified themselves as police officers before Mr. Ke█ made his "suck my dick" comment. The police van is visible in the video footage for only one second after it struck Mr. Ke█'s hand and in this view there is no indication that the emergency lights were illuminated. Officer Schack and Mr. Ke█ are not visible in the frame during their verbal exchange, but the audio portion of their exchange is clear. Officer Schack did not verbally identify himself as a police officer at any point before deciding to arrest Mr. Ke█. In the footage Officer Schack said to Mr. Ke█, "You're a fucking idiot, how about that?" In their CCRB interviews, Officers Schack and Nusser did not deny that Officer Schack made such a comment. Officer Schack said that he did not recall if he had done so (even after watching the video footage of himself apparently doing so). Officer Nusser initially stated, "It's possible" that Officer Schack

made such a comment, while Officer Glynn denied that Officer Schack had made the comment. All of the officers and Mr. Ke█ agreed that Mr. Ke█ said to Officer Schack, "Suck my dick." (Officer Glynn claimed that Mr. Ke█ said, "Oh you're cops? Suck my dick.") Officer Schack acknowledged that after Mr. Ke█ said, "Suck my dick," Officer Schack was going to arrest Mr. Ke█ for disorderly conduct. Officers Glynn and Nusser claimed that before exiting the van, Officer Schack asked Mr. Ke█ to provide his identification so that Officer Schack could issue him a summons and that Mr. Ke█ responded by cursing at the officers and refusing to provide his identification. Even Officer Schack does not claim that this interaction occurred, and he acknowledged that he did not intend to issue a summons to Mr. Ke█ but rather was going to immediately arrest him. The video footage indicates that Officer Schack immediately exited the van after Mr. Ke█ said, "Suck my dick." In the footage, Officer Schack responded to Mr. Ke█, "How about you turn around?" but up until this point, Officer Schack had never identified himself verbally as a police officer.

In his sworn testimony to the CCRB, Mr. Ke█ stated that Officer Schack exited the van and immediately grabbed onto him. Mr. Ke█ stated that at the time of the incident, he did not recall ever hearing the officers identify themselves. Mr. Ke█ indicated in his intake statement to the CCRB that Officer Schack told him to "turn around"—but Mr. Ke█ said that Officer Schack gave this order only after he had grabbed onto Mr. Ke█'s arm. Mr. Ke█ claimed that a fraction of a second after Officer Schack exited the van, he "threw" Mr. Ke█ onto the ground. Mr. Ke█ testified that Officer Schack and the front passenger of the van (Officer Nusser) displayed their shields and informed Mr. Ke█ that he was under arrest before bringing him onto the ground. (All of the officers agreed that it was Officer Glynn, the rear passenger of the van, and not Officer Nusser who brought Mr. Ke█ onto the ground with Officer Schack.) According to the video footage, six seconds elapsed from when Mr. Ke█ said, "Suck my dick" until when the camera can be heard falling onto the ground. There is no visibility in the footage of the incident after Mr. Ke█ made this comment, but Officer Schack does in fact say to Mr. Ke█, "Turn around," after Officer Schack had already opened the door of the van. It is impossible to know if Officer Schack had exited the van and initiated physical contact with Mr. Ke█ when Officer Schack told Mr. Ke█ to turn around. An unknown officer yelled out, "Police!" three times after Officer Schack told Mr. Ke█ to turn around. According to Officer Schack, Mr. Ke█ initially placed his arms behind his back but then made an aggressive movement towards Officer Schack. Officer Glynn then pulled Mr. Ke█ onto the ground. Officer Glynn stated that Mr. Ke█ became immediately aggressive after Officer Schack requested his identification and that he and Officer Schack pulled Mr. Ke█ onto the ground. Officer Nusser testified that he did not witness Officers Schack and Glynn take Mr. Ke█ onto the ground, because Officer Nusser was in the process of walking around the van to assist his colleagues. Mr. Ke█ did not believe that Mr. Ke█ fought with the officers before they brought him onto the ground. Mr. Ke█ said that he was not certain but "guesses" that he moved his arm away from Officer Schack, because Officer Schack had never identified himself a police officer. Before Officers Schack and Glynn took Mr. Ke█ onto the ground, Mr. Ke█ can be heard saying to them in the video footage, "Let's go! Let's go motherfucker! Let's go!" Mr. Ke█ said that the injury to his face was sustained when his face struck the ground. Officers Schack, Glynn, and Nusser testified that they did not see Mr. Ke█'s face hit the ground and only observed Mr. Ke█'s injury once he was handcuffed. They could not explain how the injury was sustained.

#### **Assessment of Evidence**

Based on the undisputed facts in this case and an evaluation of the evidence, the following narrative of the events can be constructed. Mr. Ke█ was standing on the north side of East Sixth Street with his left hand extended into the street in an attempt to flag down a taxi. Mr. Ke█ was standing slightly past the passenger's side exterior panel of a parked car, when an unmarked police van passed by Mr. Ke█. Mr. Ke█ turned away from the street as the van was approaching him. As the van passed by Mr. Ke█, the driver's side rear view mirror of the van struck Mr. Ke█'s outstretched left hand. Officer Schack drove the van ten to fifteen feet past Mr. Ke█. Mr. Ke█ yelled out that the van had struck his hand. Officer Schack drove the van in reverse and questioned Mr. Ke█. Without ever verbally identifying himself as a police officer, Officer Schack called Mr. Ke█ a "fucking idiot." Mr. Ke█ responded by telling Officer Schack, "Suck my dick." Officer Schack immediately exited the van to place Mr. Ke█ under arrest for disorderly conduct. In the six seconds between Mr. Ke█'s comment to Officer Schack and when Officers Schack and Glynn pulled Mr. Ke█ onto the ground, an unknown officer identified himself as a

police officer three times. Officer Schack told Mr. Ke█ to turn around one time but never verbally identified himself as a police officer. Mr. Ke█ was verbally combative, but the extent of his physical resistance to the officers is in dispute. When Mr. Ke█ fell onto the ground, his head struck the pavement, causing a laceration that required ten stitches to mend. Mr. Ke█ also sustained injuries to his arm and knee during the fall.

There are only two major facts in dispute regarding the information in the above narrative. The first issue concerns Mr. Ke█'s placement in the street and the validity of his arrest for subsection five (obstructing vehicular traffic) of the disorderly conduct statute. The second issue concerns the force that Officers Schack and Glynn used against Mr. Ke█ to apprehend him. While Officer Schack did not admit to cursing at Mr. Ke█, his narrative of the events is more consistent with Mr. Ke█'s testimony than that provided by Officers Glynn or Nusser. Nevertheless, Officer Schack's description of Mr. Ke█'s conduct is clearly exaggerated. The extent to which the testimony of Officers Glynn and Nusser differs from the facts established by the testimony of Officer Schack and Mr. Ke█—where consistent—and the independent evidence reflects negatively on their credibility as witnesses. Officers Glynn and Nusser did not admit to seeing Officer Schack say or do anything that could reflect negatively upon him. At the same time, these officers provided an exaggerated description of Mr. Ke█'s conduct. Mr. Ke█, Mr. Ka█, and Officer Schack all agreed that Mr. Ke█ was attempting to hail a taxi with his hand extended into the street before Officer Schack drove by Mr. Ke█. Officer Schack implicitly acknowledged in his CCRB testimony that Mr. Ke█ was not standing in the "middle" of the street, as Officer Schack had written in Mr. Ke█'s arrest report, but was four to five feet into the street. Officer Schack's downgraded estimation of this distance in his CCRB testimony is still greater than Mr. Ke█'s estimation or that of Officer Glynn, who said that Mr. Ke█ was only one to two feet into the street and left ample room for the van to pass him. Officers Glynn and Nusser conveniently denied seeing Mr. Ke█ attempting to hail a taxi before the van struck Mr. Ke█'s hand. However, both claimed that they saw Mr. Ke█ stick out his hand just as the van passed in order to intentionally strike it. There is no dispute between Mr. Ke█ and Officer Schack that Mr. Ke█ was attempting to hail a taxi when Officer Schack's van struck Mr. Ke█. Officer Schack testified that he saw Mr. Ke█ hailing the taxi from fifty to sixty feet away and that Mr. Ke█ remained in the same position on the street up until Officer Schack's van passed by Mr. Ke█. According to Officer Schack, Mr. Ke█ stepped towards the van as it passed and intentionally slapped the rearview mirror closed. This investigation did not credit the account of these three officers based on their overall lack of credibility and attempts to exaggerate Mr. Ke█'s conduct. It is telling that Officer Schack did not accuse Mr. Ke█ of intentionally striking the van when he first questioned Mr. Ke█ and only took police action against Mr. Ke█ when Mr. Ke█ made his "suck my dick" comment. Officer Schack admitted that Mr. Ke█ did not actually obstruct the movement of any vehicles and that Mr. Ke█ was charged with §240.20(5) solely for striking the van. Officer Schack testified that he drove the van a full fifteen feet past Mr. Ke█ after the collision, indicating that the free movement of the van was not in fact obstructed.

In his CCRB testimony and the arrest report that he prepared for Mr. Ke█, Officer Schack provided a highly misleading and often inaccurate account of the incident that served to hide his own culpability for its escalation. In his CCRB testimony, Officer Schack said that he verbally identified himself as a police officer and asked Mr. Ke█ why he had struck the van. Mr. Ke█ reportedly responded, "Suck my dick." While Mr. Ke█ did in fact make this statement, Officer Schack claimed to not remember his own highly inflammatory remark that preceded Mr. Ke█'s comment. The video footage also contradicts the officers' claim that Officer Schack verbally identified himself as a police officer. Officer Schack admitted that Mr. Ke█'s comment was the impetus for Officer Schack immediately exiting the van and placing Mr. Ke█ under arrest for disorderly conduct. Officers Glynn and Nusser attempted to portray the process of charging Mr. Ke█ with disorderly conduct as being much more deliberate and thought out than it in fact was. Both of these officers claimed that Officer Schack had requested Mr. Ke█'s identification from within the patrol car and only arrested Mr. Ke█, when Mr. Ke█ refused to provide his identification. The video footage of the incident belies their accounts and demonstrates that Officer Schack acted to arrest Mr. Ke█ immediately after the "suck my dick" comment. The mistruths of Officer Glynn and Nusser do not appear to be honest mistakes but rather are consistent with a larger attempt by the officers to exaggerate the culpability of Mr. Ke█ and downgrade that of Officer Schack. All parties generally agree that the force used against Mr. Ke█ consisted of Officers Schack and Glynn pulling Mr. Ke█ onto the

sidewalk. The validity of this use of force depends on the extent to which Mr. Ke█ was physically resisting arrest. The video footage confirms that one of the officers verbally identified himself and Mr. Ke█ responded, "Yeah right" before Mr. Ke█ struck the ground. It is not clear, however, if Officer Schack had already grabbed onto Mr. Ke█ when these comments were made. Mr. Ke█ testified that once the officers had exited the vehicle they displayed their shields for the first time and told Mr. Ke█ that he was under arrest. Mr. Ke█ said that he did not remember seeing Mr. Ke█ resist the officers' attempts to arrest him. Mr. Ke█ admitted that he did not place his arms behind his back and may have moved his arm away from Officer Schack when Officer Schack went to grab it. Up until this point, Mr. Ke█ stated that the officers had never identified themselves as police officers. While Mr. Ke█'s physical apprehension is not visible in the video footage, the footage demonstrates that the officers did not give Mr. Ke█ much of an opportunity to comply with their directives after identifying themselves. Officers Schack and Glynn both claimed that Mr. Ke█ was aggressively resisting their attempts to handcuff him. The testimony of these officers regarding Mr. Ke█'s conduct in this instance cannot be credited due to their demonstrated exaggeration of other aspects of Mr. Ke█'s conduct.

**Allegation A- Courtesy: Police Officer Douglas Schack spoke obscenely and/or rudely to Ke█**

In the video footage that Mr. Ke█ provided to the CCRB, Officer Schack clearly says to Mr. Ke█, "You're a fucking idiot, how about that?" Although Officer Schack is not visible in the footage, when he made this comment, none of the police officer witnesses disputed the authenticity of the video footage that Mr. Ke█ provided to the CCRB. Officer Schack did not deny that he made the comment. The identification of Officer Schack as the subject of this allegation is also not in dispute based on Mr. Ke█'s physical description of Officer Schack and the undisputed fact that Officer Schack was driving the van and was the only officer to speak with Mr. Ke█ from within the van. Patrol Guide procedure 203-09 states in part that an officer must be "courteous and respectful" with members of the public (encl. 1). Officer Schack's comment to Mr. Ke█ served no legitimate law enforcement purpose and escalated this incident to the point where Mr. Ke█ was arrested. As the preponderance of the evidence suggests that Officer Schack called Mr. Ke█ a "fucking idiot" and did so with no legitimate purpose, it is recommended that **allegation A** be closed as **substantiated**.

**Allegation B- Abuse of Authority: Police Officer Douglas Schack arrested █ Ke█**

According to section 240.20 of the New York State Penal Law, a person is guilty of disorderly conduct:

- When, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof;
1. He engages in fighting or in violent, tumultuous or threatening behavior; or
  2. He makes unreasonable noise; or
  3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
  4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
  5. He obstructs vehicular or pedestrian traffic; or
  6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
  7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (encl. 2).

In the interpreting the meaning of subsection three of Penal Law 240.20, a NYPD deputy commissioner of trials determined in the October 2003 disciplinary case of *Police Officer Armando Erazo* (case 78196/02) that Officer Erazo had improperly arrested a civilian, David Lashley, who called the officer a "fucking idiot" in public. The administrative law judge noted that the New York Court of Appeals had consistently ruled that the "public inconvenience" clause of the statute "limits the offense of Disorderly Conduct to situations that develop beyond a dispute between individuals to a point where the dispute becomes a general public disturbance problem" (encl. 3c). The administrative law judge ruled that the arrest was improper, because Officer Erazo acted "solely out of pique because he felt that Lashley had disrespected him" (encl. 3e). In the disciplinary case of *Police Officer Christopher Staffu* (79898/04) and *Lieutenant*

*Joseph Curtin* (79899/04) from March 2005, a NYPD law administrative law judge clarified the role of intent and recklessness in creating public alarm. The judge ruled that a civilian was properly arrested for disorderly conduct when she cursed at two police officers in public, although she may not have intended to cause public alarm. In this case the civilian, Rachel Christy, admittedly “got upset and started cursing really bad” when two officers stopped her and asked her to provide ID. Ms. Christy, who said that she suffered from “major depression” and bipolar disorder, had forgotten to take her required medication on the date of the incident and felt that she was constantly being harassed by police officers. The administrative law judge concluded that Ms. Christy had been cursing at a “constant screech” and had caused a “small group of onlookers” to come onto the street. The judge ruled:

Even if Christy had no intention of causing public inconvenience, annoyance, or alarm, her loud exclamation and her continuous use of profanity provided the Respondents with sufficient probable cause to issue Christy a summons for Disorderly Conduct because, as the Court of Appeals has held, the offense of Disorderly Conduct “is directed at words and utterances” that can “recklessly,” as well as intentionally, “create a risk of public inconvenience, annoyance, or alarm,” and “(d)isorderly conduct occurs when a person...uses abusive or obscene language.” (encl. 4g)

Based on the forgoing precedents, this investigation determined that Mr. Ke█’s conduct did not provide Officer Schack with probable cause to arrest Mr. Ke█ for subsection three or five of the disorderly conduct statute. Officer Schack admitted that he decided to arrest Mr. Ke█ for disorderly conduct only once Mr. Ke█ said to Officer Schack, “Suck my dick.” Mr. Ke█ made this comment in response to Officer Schack’s unprovoked and unprofessional assertion that Mr. Ke█ was a “fucking idiot.” The evidence indicates that Officer Schack had not identified himself as a police officer when he was speaking with Mr. Ke█ and acted out of personal “pique” to arrest Mr. Ke█ after Mr. Ke█ said, “Suck my dick.” As discussed in the case of *Erazo*, a civilian’s use of profanity in addressing an officer does not warrant an arrest for disorderly conduct. In contrast to the case of *Staffu and Curtin*, Mr. Ke█ made only one profane utterance and there is no indication that this utterance recklessly or intentionally caused public alarm.

Officer Schack’s arrest of Mr. Ke█ for subsection five of the disorderly conduct statute (obstructing traffic) is not justified and it appears that Officer Schack charged Mr. Ke█ with this second offense in a bad-faith attempt to justify the arrest for subsection three of the statute after the fact. In the disciplinary case of *Police Officers Steven Truglio and Angel Lopez* (2003, 78267/02 and 78268/02), a NYPD administrative law judge ruled that Officer Lopez improperly arrested and issued a summons for disorderly conduct to a civilian, Michael Otero, who stood in front of an eighteen-wheel tractor trailer which was proceeding with a green traffic light for 20 to 30 seconds. Mr. Otero then stood in front of an unmarked police car for ten seconds and cursed at both the occupants of the police car and the truck. In evaluating subsection five of the disorderly conduct statute, the administrative law judge noted that an arrest for obstructing traffic requires the element of “public inconvenience.” The judge ruled, “Otero’s actions fell short of the requisite element for making an arrest on this charge insofar as there was no showing that he blocked the street for an extended period of time to the public’s inconvenience or that he refused to obey the Respondents’ instructions, which were never uttered, to move out of the way so as to allow traffic to proceed” (encl. 5c). Officer Schack provided no convincing basis for charging Mr. Ke█ with §240.20(5). Officer Schack admitted that Mr. Ke█ was engaged in legitimate conduct by attempting to hail a taxi and that Mr. Ke█ had not obstructed the free movement of any vehicles before he supposedly struck the van with his hand. The fact that the van was able to pass by Mr. Ke█ is evidence that Mr. Ke█ was not in fact obstructing its movement. Based on *Truglio and Lopez*, Mr. Ke█ would not have been guilty of disorderly conduct if he had stepped directly in front of the van for a short period of time. Even assuming that Officer Schack honestly believed that Mr. Ke█ had intentionally struck the police van, it is difficult to understand how this action could be classified as obstructing traffic to the point of “public inconvenience.” The preponderance of the evidence establishes that Mr. Ke█ did not intentionally strike the police van and there is no indication that Officer Schack even believed that Mr. Ke█ had done so at the time of this incident. Before arresting Mr. Ke█, Officer Schack never accused Mr. Ke█ of intentionally striking the mirror and did not stop the van immediately after the collision with Mr. Ke█’s hand. Before arresting Mr. Ke█, Officer Schack only questioned Mr. Ke█ about standing “in the

middle of the street" and did not mention the mirror. It is also telling that Officer Schack charged Mr. Ke█ with this offense only after he decided to arrest Mr. Ke█ for the "suck my dick" comment.

Granted that Officer Schack improperly arrested Mr. Ke█ for two counts of disorderly conduct, it is necessary to determine whether he acted in bad faith. In the case of *Police Officer Erazo*, the administrative law judge noted that "members of the service are required to be familiar with the elements of the Penal Law offenses and a member who is unsure whether an arrest for a particular offense is appropriate or unwarranted, should, where feasible, consult with a supervisor before effecting the contemplated arrest." Regardless, an officer would not be subject to discipline if an arrest was "not intentional but was instead the result of an honest mistake." In *Erazo*, the administrative court ruled that Officer Erazo acted in bad faith, because he acted "solely out of pique because he felt that Lashley had disrespected him" (encl. 3d-e). The video footage establishes that Officer Schack acted out of pique and with no deliberation to arrest Mr. Ke█ immediately after Mr. Ke█'s comment. Officer Schack further demonstrated his bad faith by provoking Mr. Ke█'s response and then conveniently asserting his authority. Even after Officer Schack had time to think about what he had done and consult with a supervisor, he wrote a highly misleading arrest report that exaggerated Mr. Ke█'s conduct and omitted Officer Schack's own responsibility for the incident. Officer Schack compounded his original error by adding the charge of obstructing traffic to Mr. Ke█'s arrest report without sufficient cause to do so. This fact pattern suggests that Officer Schack was aware that his conduct was inappropriate and was attempting to justify it. In sum, the preponderance of the evidence establishes that Officer Schack improperly charged Mr. Ke█ with two counts of disorderly conduct and acted in bad faith. It is therefore recommended that **allegation B** be closed as **substantiated**.

**Allegation C- Force: Police Officer Douglas Schack used physical force against █  
Ke█**

**Allegation D- Force: Police Officer William Glynn used physical force against █  
Ke█**

Patrol Guide procedure 203-11 states that "only that amount of force necessary to overcome resistance will be used to effect an arrest" (encl. 6). Although Officer Schack made an unfortunate decision to arrest Mr. Ke█ in this case, it is not clear that the force that Officers Schack and Glynn used against Mr. Ke█ was excessive. Mr. Ke█ sustained a laceration to his head that required ten stitches to heal when his head struck the sidewalk face first. Officers Schack and Glynn do not dispute that Mr. Ke█ sustained an injury to his head during this incident but could not account for how the injury occurred. These officers, however, do not dispute Mr. Ke█'s assessment of the force that they used against him. The evidence, therefore, clearly establishes that Officers Schack and Glynn pulled Mr. Ke█ onto the ground. The issue in dispute concerning this allegation is not the extent of the force used against Mr. Ke█ but rather whether this use of force was warranted by the circumstances. Officers Schack, Glynn, and Nusser all claimed that Mr. Ke█ was uncooperative and belligerent during the arrest process. Officers Glynn and Nusser in particular cannot be credited, because they falsely claimed that Officer Schack originally attempted to issue Mr. Ke█ a summons and only arrested Mr. Ke█ once he refused to provide identification. Officer Schack admitted that there was little deliberation involved in his decision to arrest Mr. Ke█ but claimed that Mr. Ke█ made an aggressive movement towards him when Officer Schack attempted to handcuff him. Mr. Ke█'s account of the force used against him cannot be relied upon. Mr. Ke█ was admittedly intoxicated and his testimony in this case can only be credited to the extent that it is consistent with the video evidence and the testimony of other witnesses. There is no visibility of Mr. Ke█'s arrest in the video footage for this incident and the audio portion is inconclusive. The audio portion of the footage is sufficient to establish that neither Mr. Ke█ nor the officers provided an accurate account of the force used against Mr. Ke█. In his CCRB testimony, Mr. Ke█ stated that Officer Schack and one unknown officer (Officer Glynn) "threw" him onto the ground a "fraction of a second" after exiting the van. Mr. Ke█ admitted that at the time of the incident, he might not have ever heard any of the officers identify themselves as police officers. Mr. Ke█ denied that he was violent with the officers or resisting arrest but admitted that he may have moved his arm away from Officer Schack not knowing that he was a police officer. The audio footage of this incident establishes that six seconds passed from Mr. Ke█'s "suck my dick" comment until when he hit the ground. In this timeframe, Officer Schack never verbally identified

himself as a police officer but did say to Mr. Ke█, "How about you turn around?" Given that Officer Schack did not comport himself as a New York City Police Officer should have and never verbally identified himself as one, it is not reasonable to expect Mr. Ke█ to comply with this directive that was apparently issued by an engaged motorist and not necessarily an officer. The audio footage establishes, however, that another unidentified officer yelled out, "Police!" three times in this six-second timeframe. Mr. Ka█ corroborated the officers' claim that they displayed their shields before handcuffing Mr. Ke█. Mr. Ke█ and Mr. Ka█ both denied that Mr. Ke█ was resisting arrest, but the video footage of this incident demonstrates that Mr. Ke█ was verbally—if not also physically—combative with the officers. Mr. Ke█ said to Officer Schack, "Let's go! Let's go motherfucker! Let's go!" While the footage is not conclusive regarding Mr. Ke█'s conduct, it certainly suggests that Mr. Ke█ was gearing up to fight with Officer Schack. It is likely that Officers Schack and Glynn could have avoided using force against Mr. Ke█ and causing his injury, if Officer Schack had acted in a more deliberate and restrained manner. Once, however, Officer Schack made the decision to arrest Mr. Ke█, there is insufficient evidence to establish whether this use of force was excessive given the context. It is therefore recommended that **allegations C and D** be closed as **unsubstantiated**.

Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_